

The Insolvency Act 2003
The Insolvency Rules 2005

Form R184


Claim Form

Rule 184

Name of Proceeding: Three Arrows Capital, Ltd. (In Liquidation) (TACL)

Date of Appointment of Liquidator: 27 June 2022

No:

1	Name of Creditor	Three Arrows Fund, Ltd. (In Liquidation) (TAFL)
2	Address of Creditor	c/o Interpath (BVI) Limited LM Business Centre, 4th Floor, Fish Lock Road, Road Town, Tortola, British Virgin Islands
3	Total amount of claim as at the date of appointment of liquidator	\$ 409,467,316.00
4	If total amount above includes outstanding uncapitalised interest, please state amount	\$ Unknown
5	Give details of whether the whole or any part of the debt falls within any (and if so which) of the categories of preferential debts set out in the Insolvency Rules, 2004.	Category n/a Amount(s) claimed as preferential \$ n/a
6	Particulars of how and when debt incurred	Please refer to the attached explanatory note.
7	Details of any documents by reference to which the debt can be substantiated [Note: the liquidator may call for any document or evidence to substantiate the claim at his discretion]	Please refer to the attached explanatory note.
8	Particulars of any security held, the date it was given and the value of the security	n/a
9	Signature of creditor or person authorized to act on his behalf Name in BLOCK LETTERS Position with or relation to creditor Address	:  : PAUL PRETLOVE : Joint Liquidator : LM Business Centre, 4th Floor, Fish Lock Road, Road Town, Tortola, British Virgin Islands



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Explanatory note in support of the Three Arrows Fund, Ltd. (In Liquidation) (TAFL) claim form submitted in the Three Arrows Capital, Ltd. (In Liquidation) (TACL) liquidation (the TAFL Claim Form).

A. Post January 2022 Failed Subscription to Shares

1. Ascent Fund Services (Singapore) Pte. Ltd. (**ASCENT**) has provided the TAFL Joint Liquidators (the **TAFL JLS**) with a NAV Pack for the month ending 31 January 2022, which shows 703,546.60 shares in issuance set forth as follows:

Share Class	Shares 31 Jan 22 Issued	NAV/share 31 Jan 22 (US\$)	Share Register Info 31 Mar 22 ¹
Class B-Sep 2021 Series	278,383.87	827.23	
Class B-Lead Series	4,387.14	226,918.48	
Sub-total	282,771.01		422,154.04
Class J-Lead Series	3.99	1,315.13	3.99
Class L-Lead Series	500.00	1,178.91	500.00
Class Warbler-Lead Series	35,000.00	93.74	25,000.00
Class Starry Night	21,823.50	978.00	
Class Starry Night Nov	14,075.00	989.61	
Class DeFiance A - Jan 2022	49,940.92	76.65	
Class DeFiance A-Lead Series	110,058.92	695.57	
Class DeFiance-Lead Series	189,373.26	537.89	
Sub-total	385,271.60		438,271.60
Totals	703,546.60		885,929.63

¹ Information for the TAFL Share Register as of 31 March 2022 was included in the TACL Joint Liquidators' (**TACL JLS**) objection to TAFL Petition for Recognition under Chapter 15 of the U.S. Bankruptcy Code filed in Case No. 24-10210 (MG) ECF No. 15 at ¶ 21.

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2. According to the Objection, TAFL purportedly issued 192,383 shares (the **Subscription Shares**) after 31 January 2022, consisting of 139,383 Class B shares and 53,000 Other Shares, which monies would have been paid into an account controlled by TACL. It is the TAFL JLS understanding that the Net Asset Values (**NAV**) for TACL and TAFL struck on 31 January 2022 were the last NAVs struck prior to TACL and TAFL being put into liquidation, which information was confirmed by ASCENT.
3. The TAFL JLS have not yet received the documentation requested from the TACL JLS related to the Subscription Shares and where the related paid-in monies are now held.
4. Based on the information available to the TAFL JLS, TAFL's claim related to these failed subscriptions is estimated to be \$159,746,863.04.
 - i. TAFL Class B claim. The TAFL claim is estimated to be **US\$115,301,799.09** (139,383 shares times US\$827.23) plus statutory interest at 5% being **US\$1,374,144.73** (computed from 1 April 2022 to 27 June 2022) plus **US\$10,156,035.18** (interest computed from 27 June 2022 to 31 March 2024) based on the 31 January 2022 NAV for Class B – September 2021 Series.²
 - ii. TAFL Other class claim. Based on the January 2022 NAV Pack, the TAFL claim is estimated to be **US\$29,922,621.85** (53,000 shares times US\$564.58 (the **Weighted Average**)) plus statutory interest³ at 5% being **US\$356,612.07** (computed from 1 April 2022 to 27 June 2022) plus **US\$2,635,650.12** (interest computed from 27 June 2022 to 31 March 2024). The Weighted Average is the weighted average NAV of each of the DeFiance and Starry Night share classes as at 31 January 2022.
5. The TAFL JLS view the failed subscriptions as direct tracing monetary claims that are proprietary and/or equitable in nature and will pursue the recovery of those funds which are included here for completeness.

² The TAFL JLS believe this is a reasonable calculation of the TAFL Tracing Claim with respect to the failed Subscription Shares. Alternative calculations would have resulted in a principal claim amount of \$604,227,758.89 (using the weighted average NAV of the TAFL "B" share classes) or more than \$31 billion if the NAV of the Class B – Lead Series was used, which does not seem realistic.

³ We believe that both interest amounts should be paid in priority to ordinary creditors.

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B. Unauthorised Issuance of Shares- DeFiance, Starry Night and Warbler Share Classes

1. In addition to the Post January 2022 Failed Share Subscriptions, TAFL (and Three Arrows Fund LP (**Onshore Fund**)) collectively own the assets underlying the DeFiance, Starry Night and Warbler share classes. As set forth in greater detail below, TAFL and the Onshore Fund have a proprietary or trust claim to such assets, however, we are providing details thereto based on the demand received from the TAFL JLS.
2. TAFL does not have an offering memorandum, however the TAFL Articles of Association (the **TAFL AoA**) allows for an authorised share capital of 50,000 shares. The TAFL AoA paragraph 5 states as follows:

"The Company is authorised to issue a maximum of 50,000 shares divided into five (5) classes;

- (a) 100 voting, non-redeemable, non-participating Shares of US\$0.01 par value each each ("Management Shares"); and*
(b) 49,900 Shares of US\$0.01 par value each divided in the following classes:

- (i) non-voting, redeemable participating Unrestricted Class A Shares ("Unrestricted Class A Shares");*
- (ii) non-voting, redeemable participating Restricted Class A Shares ("Restricted Class A Shares");*
- (iii) non-voting, redeemable participating Unrestricted Class B Shares ("Unrestricted Class B Shares");*
- (iv) non-voting, redeemable participating Restricted Class B Shares ("Restricted Class B Shares");*
- (v) non-voting, redeemable participating, Class C Shares ("Class C Shares");*

(together Unrestricted Class A Shares, Restricted Class A Shares, Unrestricted Class B Shares, and Restricted Class B Shares, and Class C Shares are referred to as "Participating Shares", further a reference to Class A Shares or Class B Shares, includes the Restricted and Unrestricted classes).

Each class of Shares shall be divided into such series as the Directors determine ("Series"). Shares will be issued in the currency of the United States."

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3. Any such purported issuance of shares in the Warbler, Starry Night and Starry Night November classes is void as a matter of BVI law. TAFL's claim is to the assets underlying these shares as at the date of the last struck NAV, as follows:

Share Class	Number of TAFL Shares (#)	Number of Purported TAFL Shares issued to TAFL per the CF Affidavit (#)	Value of Holdings 31 January 2022 (US\$)
DeFiance	349,373.10	301,115.79	207,618,345.84
Starry Night	21,823.50	21,823.50	21,641,896.30
Starry Night Nov	14,075.00	14,075.00	13,869,073.38
Warbler-Lead Series	35,000.00	1,220.46	3,309,342.65
Total	420,271.60	338,234.75	246,438,658.17

4. We refer you to the Affidavit of Christopher Farmer (CF), Joint Liquidator of TAFL, dated 29 November 2022, that was submitted in support of the uncontested Starry Night TAFL Application that was heard on 6 June 2023. We note the below listed pertinent points that he made, including the relevant paragraph reference.
- i. Paragraph 6 *"The Company has control over substantially all 2,694 of the NFTs, but the Liquidators are concerned that third parties may assert a beneficial interest in them."* CF fails to elaborate on why this is a concern of the TAFL JLS, however, it is clear why when CF elaborates on the constitutional documents of TAFL, TAFL and Three Arrows Fund, LP (the **Onshore Feeder**).
 - ii. Paragraph 16 *"The Liquidators have identified an undated presentation to investors which summarises the basic investment proposition: [CF-1/38]. "Starry Night Capital" is described as an "NFT fund", i.e. a fund which specialises in Non-Fungible Tokens."*
 - iii. Paragraph 17 *"The presentation stated that: (a) Starry Night Capital was assembling "the world's greatest NFT collection". (b) The launch date of Starry Night Capital was 1 October 2021. (c) The size of the fund was US \$100 million. (d) The minimum investment was US\$100,000 for accredited investors, and US\$250,000 for institutions. (e) The fund was to be administered by Mr Zhu and Mr Davies. (f) The lock-up period was 72 months."* Based on ii. and iii. it is clear Starry Night is a separate fund and not assets of TAFL subject to the claims of its creditors.

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- iv. In paragraph 24 CF states regarding the TACL AoA that *"It contains provisions that are in my experience usual for a fund of its nature"* he further correctly recognises that TACL only had 5 share classes of which DeFiance, Warbler, and "Starry Night" are not included.
 - v. Within paragraph 24 (e) CF also notes an important provision from the TACL AoA *"based on the Company M&A, there are no other distinctions between the Participating Shares (Restricted/Unrestricted and Class A/B/C Shares);"*. Therefore, it is irrefutable to say that TACL could not issue shares in DeFiance, Warbler, and Starry Night.
5. Based on the points highlighted by CF and the documents exhibited to his affidavit in the Starry Night proceedings, the TAFL JLS note that the DeFiance, Warbler and Starry Night share classes were never legally subscribed to at the TACL level. Instead, these separate portfolios consisted of assets held on trust or in custody for the benefit of the TAFL (and Onshore Fund) investors that subscribed to the DeFiance, Warbler and "Starry Night" share classes at the feeder level. Accordingly, these assets were never part of TACL's capital such that these assets could be used to satisfy the claims of TACL creditors.
6. As per the above table, as at 31 January 2022, the value of investments into the DeFiance, Starry Night and Warbler share classes totals US\$246,438,658.17. Therefore, the TAFL JL's claim amounts to **US\$246,438,658.17** plus 5% interest of **US\$21,706,857.15** (computed from 27 June 2022 to 31 March 2024⁴), which amount may be reduced by the amount attributable to specific assets still under the control of the TACL JLS, subject to the TACL JLS transferring/turning over such assets to the control of the TAFL JLS.

C. Unauthorised Overissuance of Shares

1. Should the TACL JLS take and successfully maintain the position that the Starry Night, DeFiance and Warbler share classes were duly authorised and issued under the TACL AoA, which they were not, the TAFL JLS have an alternative and consequential legal basis to its claim set forth in paragraph B above.
2. As noted at B. 1., the TACL AoA authorised TACL to issue 49,900 Participating Shares.

⁴ We reserve the right to claim for pre-relevant period interest and will do so when information is available to us.

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3. Based on the fact that TAFL would have exceeded the number of authorised shares it could issue at some point during 2020, where it started 2020 with 7,761.69 outstanding shares and ended the year with 288,358. The TAFL JLS do not have details as to when the shares were issued throughout 2020 (a full accounting would be required), however the proceeds of the shares issuances are set forth below (which shares were issued to TAFL and the Onshore Fund):

Share Class	Shares at 1/1/2020	Shares Issued/ Redeemed	NAV	Unauthorised Issuance Value (US\$)
Three Arrows Fund, Ltd - Class B	7,000.00	5,085.74/ (1,510.55)		\$0.00 ⁵ / \$35,504,413.00 ⁶
Three Arrows Fund, Ltd -Share Class DeFiance	0.00	278,052.67/ (269.86)		\$26,720,762.00 ⁷ / \$27,078,281.00 ⁸
2021				
Three Arrows Fund, Ltd - Class B		911.78	\$305,319.12	\$278,383,870.00
Three Arrows Fund, Ltd -Share Class DeFiance		33,8625.04		\$29,705,537.00
Three Arrows Class Starry Night		36,931.50		\$36,931,500.00
Three Arrows Class Starry Night November		22,000.00		\$22,000,000.00
Three Arrows Class Warbler		6,156.22		\$15,725,647.00
Total				\$409,467,316 - \$445,329,248

4. The total amount of **US\$409,467,316.00** is the amount included on the accompanying TAFL Claim Form, should the position in B. above not be upheld and based on the assumptions stated.

D. Reservation of Rights

1. The TAFL JLS expressly reserve their rights and the rights of TAFL to amend and supplement TAFL's Claim as a result of the TAFL JLS' failure to turnover TAFL's books and records in their possession. For the record, the TAFL JLS have also

⁵ The DeFiance shares were issued in or about August 2020. Assuming the Class B shares were issued prior to August 2020, there would be no unauthorised issuance value.

⁶ Assuming the DeFiance shares were issued prior to the net Class B shares, the full amount of the Class B issuance would have been an unauthorised overissuance.

⁷ Assuming the Class B shares were issued first, 267,207.62 DeFiance shares would have been an unauthorised overissuance.

⁸ Assuming the DeFiance shares were issued before the Class B shares, 270,782.81 DeFiance shares would have been an unauthorised overissuance.

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requested information from the TACL JLS' information related to TACL, including its books and records, so that they can analyse the conclusions drawn and representations made to the BVI Court in connection with the Starry Night application. TAFL's failure to assert any claim including but not limited to tracing claims, proprietary claims, trust and/or custodial claims, equitable claims, any other similar and related claims or creditor claims, and any claims in relation to the DeFiance, Starry Night and Warbler assets and the share class failed subscriptions and/or overissuances shall not be construed as a waiver of such claims.

2. The TAFL JLS expressly reserve all of their rights and the rights of TAFL for any losses resulting from the TACL JLS withholding of information or the conversion of the TAFL assets by the TACL JLS including but not limited to the DeFiance, Starry Night and Warbler asset portfolios.
3. We have included information in this explanatory note regarding trust and/or proprietary claims but have not been able to pursue due to a lack of information regarding our estate, that we believe you hold. The filing of this claim is not meant to be construed as giving up any interest that TAFL may have to the assets held by TACL and we expressly reserve all rights to such claims.

E. Total Claim Summary

1. Therefore, the total amount being claimed can be summarised as follows:

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Claim Item	Claim (US\$)	Pre-liquidation Interest (US\$)	Post-liquidation Interest (US\$)	Total Claim (US\$)
For Information Purposes				
A. Post January 2022 Subscription to Shares	145,224,420.94	1,730,756.80	12,791,685.30	159,746,863.04
B. Unauthorised Issuance of Shares- DeFiance, Starry Night and Warbler Share Classes	246,438,658.17	-	21,706,857.15	268,145,515.32
Unsecured Creditor Claims				
C. Unauthorised Overissuance of Shares	409,467,316.00	TBD	-	409,467,316.00